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A CANDID
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EXAMINATION
OF THE

LEGALITY of the WARRANT

ISSUED BY THE
SECRETARIES of STATE
FOR

Apprehending the Printers, Publishers, &c. of a late
INTERESTING PAPER.



L O N D O N,

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Church-yard. MDCCCLXIV.

A CANDID

B. X. A. M. I. N. A. T. I. O. N.

OF THE

REGALTY OF THE WARRANT

ISSUED BY THE

SECURITY OF THE STATE

TO

APPROPRIATE MEMBERS OF THE

INTERESTING PAPER



THE BRITISH MUSEUM
LONDON

A CANDID
EXAMINATION
OF THE
LEGALITY of the WARRANT
ISSUED BY THE
SECRETARIES of STATE.

IT is by no means a matter of wonder, that a Nation so happily distinguished from all others by the Liberty it enjoys, should be extremely jealous of any attempt that has the least appearance of a violation of it. The late Warrants issued by the Secretary of State for apprehending the Authors, Printers, and Publishers of an infamous and seditious Libel against the Government, have been represented under that denomination; and this, by all the inflammatory arts that the malice of disappointed ambition could suggest, has been made use of, as a favourite engine, to alienate the affections of his subjects from the best of Princes; malevolently representing that usual and necessary exertion of Power, for the preservation of Good Order and Government, as contrary to the fundamental Laws of the Land, and derogatory to the Rights and Liberties of the People. A question, therefore, in which the Liberty of the Subject on one hand, and the Safety of the whole Community on the other, is so materially concerned, deserves

deserves the most serious attention, to consider whether what has been done is not strictly legal, justifiable, and necessary for the very being and support of the whole System of Government.

To elucidate this, it will be necessary to have recourse to Magna Charta, the solemn conventional restoration and promulgation of the Laws of England; in the twenty-ninth Chapter of which, the King makes use of these remarkable words; "Nec super eum ibimus, nec super eum mittimus, nisi per legale iudicium parium suorum, aut per legem terræ." So that, by the very express words of this Law, the great Palladium of the Liberties of the Subject, our Persons and Properties, may be as much affected by this Lex Terræ, the Law of the Land, as by the determination of a Jury. The Law of the Land consists either of positive written laws authoritatively imposed, or of such as by immemorial usage, from experienced utility, have been universally received; which is called the Common Law: and as there are no vestiges of these latter in the positive written law, they owe their existence to immemorial custom and usage; and if by that criterion they are found to exist, they are equally binding and coercive as any written promulgated laws whatsoever; and probably of more certain utility. It is an observation long since made by Aristotle, that this class of laws is more just and beneficial than any laws which the sagacity of man usually enacts, as these can only grow into laws by the universal experience of their propriety.

AND so great and omnipotent is the power of custom, that it not only creates laws, but has produced a Court, whose decisions

cisions controul, and render inoperative and of non-effect, acts authorised by the exprefs words of the Legislative Power, and determines much the greater part of the property of this nation, without the intervention of a Jury, and against the most solemn judgments and determinations of the Courts of Law, whenever people would make use of them to serve the purposes of iniquity. --- I judge it scarce necessary to say this is the Court of Chancery, whose jurisdiction is solely founded on custom.

THE customs of every court are the laws of that court, and as such are part of the Law of the Land, by which every individual is bound, and affected both in person and property. Of this, history affords a most striking instance. In the time of Henry IV. the Prince of Wales (afterwards the great Henry V.) insulted the Chief Justice on the bench, who immediately committed the Prince to the Fleet. There was no *positive law* for this commital; it was solely founded on the *Law of the Court*. If, then, a *Prince of Wales*, the first subject in the Kingdom, can be legally committed for an insult to a Magistrate, can a Secretary of State be condemned for issuing a Warrant against *inferior* persons, who libellously insult the sacred Majesty of their King, and disseminate Sedition?

It is remarkable, that at the very time the Legality of a Secretary of State's Warrant for the apprehending the Printers, Publishers, &c. of a seditious Libel against the Government, was the subject-matter of debate in a Court in Westminster Hall, a Rule was depending there, to shew cause why an Attachment should not go against a Printer who had arraigned

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the judgment of that Court. Our Secretaries of State, from the remotest antiquity, have granted such Warrants; and their right so to do will be evidenced and justified by that immemorial custom necessary for the very *Being* of Government.

HAD they exceeded the power exercised by their predecessors, they might have justly been called in question; as, on the other hand, had they pusillanimously neglected to exercise that power which was delegated to them for the preservation of Government, they would have been highly criminal, and responsible for all the dangerous consequences.

THERE must, in the nature of things, for the advantage of Society and preservation of Government, be a power somewhere lodged to detect criminals, and bring them to justice; which is the great end of Government: the forms required in doing which are for the *expediting* of justice; not, by minutely adhering to them, to defeat the great general end of Government, its own preservation, in which that of each individual is intimately concerned: "*Salus Populi est suprema Lex.*"

THE detection of the Gun-powder Plot, in the reign of King James I. is so full and clear to this purpose, that it stands in the place of a thousand arguments; I shall therefore give it fully here. An anonymous letter was delivered by an unknown hand, in the street, to a footman of Lord Montague's, in these words: "My Lord, out of the love I bear
" to some of your friends, I have a care for your preservation; therefore I would wish you, as you tender your life,
" to

“ to forbear your attendance at this Parliament ; for God and
 “ man have concurred to punish the wickedness of this time :
 “ and think not slightly of this advertisement ; for though
 “ there be no appearance of any stir, yet I say they shall re-
 “ ceive a terrible blow this Parliament, yet shall not see who
 “ hurts them. This counsel is not to be contemned, because
 “ it may do you good, and can do you no harm ; for the dan-
 “ ger is past as soon as you have burnt this letter, and I hope
 “ you will make good use of it.”

THIS intimation was at first received not only with disregard,
 but contempt : on more mature consideration, diligent search
 was ordered to be made in the Parliament-house, and *all other
 rooms and lodgings adjoining*, which produced a discovery of that
 most enormous treason. If the then Ministers should have
 thought themselves limited by the narrow bounds, to which at
 present it is attempted to confine their power no search could
 have *legally* been made, and consequently that treason could
 have been known but by its *effects*. Here was no *particular*
 treason charged, no *particular* place mentioned, only a *general*
 power to search, without having any particular object in view,
 but to make discoveries by any thing that might occur in the
 progress of it. The importance of the object, the Preservation
 of the State, authorised and justified the means. Suppose from
these means any little inconvenience should arise to particulars,
 can that be put in competition with the safety of the commu-
 nity ? It is said, that the particular places to be searched
 should be distinctly and minutely specified in the Warrant,
 and the search restrained to those : might not this directly tend to
 defeat the discovery ; if the Messengers, finding the Papers, &c.

are not in any place mentioned in their warrant, are obliged to get a new Warrant, before they can search other suspected places, may not what is searched for, be in the interim removed? How will this doctrine coincide with that *general* search that was made, and necessary to have been made in that dangerous emergency, when no less than the whole Legislative Body must otherwise have perished? I know it will be said, that to admit such a power to be vested in a Secretary of State, would make our persons and properties exposed to the insolence and caprice of a Minister, and give him an Arbitrary Power inconsistent with our Liberty. To which it may be truly answered, That this is not an Arbitrary Power, but a power to be used with discretion, for the purpose for which it was given, the Preservation of the State; and if it should be exercised inconsistent with that end, it would be an abuse of his power, for which he would be responsible to the Public; and, on an Impeachment, he must justify himself by producing the evidence of the motives of his conduct, of which the House of Peers would be the proper and competent judges. But to destroy this power for the Preservation of the State, because a Minister *might* make an improper use of it (and for doing which he would be liable to punishment, as having acted inconsistently with his duty), is the most glaring and dangerous absurdity.

Hic, rogo, non furo est ne moriari, mori?

MARTIAL.

How necessary such a power has been considered in the wisest communities, the Roman Republic affords an example. Though a people jealous of their Liberties to a prodigality of life.

life in its cause, they hesitated not a moment to invest their Dictator with a power unlimited and uncontrollable, when any remarkable grievance called for immediate redress; but as he was liable to account for his actions on the expiration of his office, they had no reason to dread the abuse of his trust.

SINCE, then, this salutary power has, from time immemorial, been made use of, attended with no inconvenience, why should we be alarmed at that as dangerous now, which has not been found oppressive through a long series of ages?

THIS *summum jus* in this affected care of the Liberties of Individuals, would be *summa injuria* to the Public, be destructive to the safety of the whole nation, and give security to Treason and Rebellion.

THE Judges, in all ages, have been particularly careful of the Liberties of the subject; and, in some instances, more scrupulously so than were consistent with the true ends of Government and safety of society; so much, that Lord Chief Justice Coke was of opinion, that a Justice had not a power to issue a Warrant to apprehend a person *suspected* of felony, before he was *indicted* for it: but Lord Chief Justice Hale was of opinion, that such *could* not be the Law, as it would be pernicious to the kingdom, as malefactors would escape unexamined and undiscovered. “*Opinionum commenta delet dies, naturæ judicia confirmat.*”

THE Privilege of Parliament has always been held sacred; and in every case where there is no Breach of the Peace, or

where Security of the Peace is not by Law required, it has ever been looked on as a sufficient security for its Members.

By Law, the writer of a Libel is not obliged to give Security of the Peace, as it does not consider that as an *actual* Breach of it. The Judges were of opinion that Privilege of Parliament extended to it. --- But the present House of Commons, with a spirit truly Roman, becoming the dignity and virtue of the purer ages of that Republic *, considered the essential reason of things, and disdained to think, that holding up the most insignificant weapon in a menacing manner, should be deemed an assault (which their Privilege could not protect); and that publishing a Libel, pregnant with Sedition and Treason, should not be deemed an assault on the whole order of Government; and therefore would not suffer the Privilege of their House to be made use of, as a protection to those, who, by their infamous Writings, were attempting to inflame a whole Nation.

But as this important question is now likely to have its final determination before the highest Jurisdiction, which holds the beam of justice with an equal hand, and is vested with a power to consider and weigh the danger the subject may sustain by being exposed to Warrants of a nature so *general*, against those difficulties to which the whole Community may be liable,

* Magnam laudem & illum collegium tribunorum tulit, quod cum unus ex eo L. Cotta fiducia sacrosanctæ potestatis creditoribus suis nollet satisfacere decrevit; si neque solveret pecuniam, neque daret eum sponsio fieret; appellantibus se creditoribus, auxilio futurum, iniquum ratum, majestatem publicam, privatæ perfidiæ obtentui esse: itaque Cottam in tribunatu, quasi in aliquo sacrario latentem, tribunitia inde justitia extraxit. Val. Max. lib. vi. cap. 5. § 4.

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should no Ministers of the Crown be invested with a power, on any emergency, to pursue measures necessary for its preservation, variant from those by which inferior Magistrates are so justly circumscribed: Till this decision, I should wish the People would be so just to themselves, as to suspend their judgments, and not be deluded by the specious arts of designing men into an imagination that their Liberties have been invaded under the administration of the best of Princes, by the exercise of that power which has uninterruptedly and innocuously been made use of by all his predecessors.

F I N I S.

should not have of the Crown be invested with a power
on any emergency, to put a momentary necessity for its pro-
vision, want from those by which inferior Magistrates are in-
justly circumvented: In this decision, I should wish the
People would be so just to themselves, as to suspend their
judgments, and not be deluded by the specious arts of design-
ing men into an imagination that their Liberties have been
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